

or so much thereof as may be covered by the plea or demurrer, at such time as, consistently with justice and the rights of the defendant, the same can be reasonably done; in default whereof, the bill shall be taken, as against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly; and such decree shall also be made when the court or judge thereof shall be satisfied that the plea or demurrer was interposed for vexation or delay merely, and is frivolous or unfounded.

No appeal lies from an order overruling a plea to a bill of complaint, since it decides a mere question of pleading. This section referred to in construing art. 5, sec. 30, *et seq.*—see notes thereto. *Peoples v. Ault*, 117 Md. 634.

Where a demurrer is accompanied by an affidavit that it was not intended for delay and the decree does not indicate that the truth of the statement was doubted by the court, the prayer of the bill should not be granted immediately without giving the defendants an opportunity to answer and be heard on the merits. *Didier v. Merryman*, 114 Md. 434.

Cited but not construed in *Stinson v. Ellicott City, etc., Co.*, 109 Md. 115.

An. Code, 1924, sec. 178. 1912, sec. 163. 1904, sec. 154. 1888, sec. 141. 1785, ch. 72, sec. 25. 1888, ch. 486.

184. Upon any plea or demurrer being overruled, upon argument or otherwise, or being withdrawn without leave of the court, the party whose demurrer or plea is so overruled or withdrawn shall pay to the opposite party the sum of ten dollars, and the costs thereof, and be in contempt until the said sum of money and costs are fully paid, unless the court shall otherwise specially order.

The uniform practice is upon overruling a plea or demurrer, to grant leave or require the defendants to answer within a limited time, and they should not be deprived of the privilege because of an unsuccessful appeal. *Trego v. Skinner*, 42 Md. 433; *Collateral, etc., Bank v. Fowler*, 42 Md. 402; *Seebold v. Lockner*, 30 Md. 137.

A defendant who is in contempt under this section, has no right to file an answer, and if he does so the same will not be considered. If, however, the fines and costs are paid before appeal taken, the answer will be considered so as to entitle the defendant to appeal from an order granting an injunction—see art. 5, sec. 31. *Gilbert v. Arnold*, 30 Md. 35.

A defendant may appeal from an order overruling a demurrer to a bill although it does not affirmatively appear that he has paid the ten dollars required by this section. *Stinson v. Ellicott City, etc., Co.*, 109 Md. 113.

An order held to be in strict conformity with this section, and the costs put upon the defendant, to be limited to those accruing on the demurrer. *Dennison v. Yost*, 61 Md. 142.

Where a plea is ruled sufficient, no costs are taxed against the complainant. *Carroll v. Waring*, 3 G. & J. 503.

This section referred to in deciding that a demurrer to the whole bill, is an answer within the meaning of art. 5, sec. 31. *Baltimore v. Weatherby*, 52 Md. 448.

Where a defendant overrules his plea by filing an answer, this section applies. *Bank of Maryland v. Dugan*, 2 Bl. 257.

Cited but not construed in *Wagner v. Shank*, 59 Md. 327; *Shipley v. Ritter*, 7 Md. 416. And see *Worthington v. Lee*, 2 Bl. 685.

Presumption that court "otherwise specially" ordered when it expressly authorized defendants to file answer after overruling demurrer. *Robbins v. Dorsey*, 150 Md. 271.

An. Code, 1924, sec. 179. 1912, sec. 164. 1904, sec. 155. 1888, sec. 142. Rule 20.

185. The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, and such statement shall operate as a denial. He shall make answer to all the material allegations. The answer shall be divided into paragraphs, numbered consecutively, each paragraph containing, as near as may be, a separate and distinct averment. The defendant shall be entitled in all cases by answer to insist upon all matters of defense in law or Equity, to the merits of the bill of which he may be